

RESOLUTION NO. 1564

A RESOLUTION APPROVING AN OFFER TO PURCHASE REAL PROPERTY  
LOCATED AT SOUTH HASKELL, CENTRAL POINT, JACKSON COUNTY  
ASSESSOR'S MAP NO. 372W10AD TAX LOTS 700 AND 798 AND  
RECOMMENDING ADOPTION OF A PURCHASE AND SALE AGREEMENT FOR  
SUCH REAL PROPERTY

RECITALS:

- A. Oregon Revised Statute Chapter 271 authorizes the City of Central Point to enter into financial agreements for the purpose of acquiring real or personal property that the City Council deems necessary.
- B. The City of Central Point City Council has deemed the purchase of that real property located at South Haskell and Ash Street in Central Point, Jackson County Assessor's Map No. 372W10AD Tax Lots 700 and 798 is in the best interest of the City of Central Point in accordance with the goals established by the 2007 City of Central Point strategic plan.

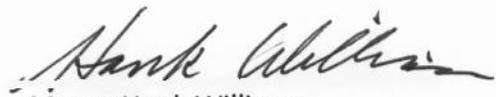
The City of Central Point resolves:

**Section 1.** The attached purchase and sale agreement for the acquisition of real property located at South Haskell and Ash Street in Central Point, Jackson County Assessor's Map No. 372W10AD Tax Lots 700 and 798 (the "Property") is approved.

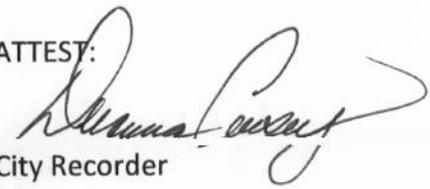
**Section 2.** The City Manager is hereby authorized, on behalf of the City and without further action by the City Council, to make the offer to purchase the Property upon the terms and conditions specified in the attached purchase and sale agreement which will remain valid for a defined period, but shall become null and void if not executed by the seller, on or before July 2019.

**Section 3.** The City Manager is hereby authorized, on behalf of the City and without further action by the City Council, to execute the attached purchase and sale agreement and to perform all necessary acts, sign all necessary documents, and complete any other necessary matters in order to purchase the subject property.

24<sup>th</sup> Passed by the Council and signed by me in authentication of its passage this day of January, 2019.

  
Mayor Hank Williams

ATTEST:

  
City Recorder



## REAL ESTATE PURCHASE AND SALE AGREEMENT

**DATE:** \_\_\_\_\_, 2019

**BETWEEN:** **Investors II, LLC,** (“Seller”)  
an Oregon limited liability company,  
2870 Nansen Drive  
Medford, Oregon 97504-4145

**AND:** **City of Central Point, Oregon** (“Purchaser”)  
An Oregon municipal corporation  
140 South Third Street  
Central Point, Oregon 97502-2216

### RECITALS

**A.** Seller is the owner of certain real property located in Jackson County (City of Central Point), Oregon, and commonly known as Township 37 South, Range 2 West, Section 10AD, Tax Lots 700 and 798 (collectively, “the subject property”). The subject property is approximately 5.06 acres in size and is undeveloped. A more particular description of the subject property is as follows:

**Parcels 1 and 2 of PARTITION PLAT NO. P-33-2016, of Record of Partition Plats in the City of Central Point, Jackson County, Oregon, and filed as Survey No. 22068, Index Volume 27, Page 33, in the office of the County Surveyor.**

**B.** Seller desires to sell the subject property to Purchaser and Purchaser desires to purchase the subject property from Seller.

### AGREEMENT

In consideration of the mutual promises, covenants and undertakings of the parties herein contained, the parties hereby agree as follows:

**1. Recitals.** The parties acknowledge and agree that the Recitals set forth above are incorporated herein and deemed a material part of this Agreement.

**2. Purchase Price.** Seller agrees to sell and convey all of Seller’s right, title and interest in the subject property to Purchaser and Purchaser agrees to buy the subject property from Seller for the sum of **One Million and No/100 Dollars (\$1,000,000.00)** (“the Purchase Price”).

The Purchase Price shall be paid as follows:

**2.1 Earnest Money.** Purchaser shall pay to Seller the sum of **Twenty-Five Thousand and No/100 Dollars (\$25,000.00)** as earnest money within five (5) business days of the parties' mutual execution of this Agreement ("the Earnest Money Payment"). The Earnest Money Payment shall be applicable to the Purchase Price. The Earnest Money Payment shall be nonrefundable except in the event of a breach of the terms of this Agreement by Seller or as otherwise specifically provided herein. The Earnest Money Payment shall be made directly to the Escrow Agent.

**2.2 Remaining Balance.** The remaining balance of the Purchase Price in the amount of **Nine Hundred Seventy-Five Thousand and No/100 Dollars (\$975,000.00)** shall be paid in cash at Closing.

**3. Title.** Seller warrants and represents that Seller is the fee simple owner of the subject property and that Seller has the right and authority to convey the subject property to Purchaser free and clear of any other claims of title and subject only to encumbrances of record and such recurring assessments and liens for real property taxes, irrigation districts or other governmental or quasi-governmental entities. Seller shall convey title to the subject property by Statutory Warranty Deed, properly executed and notarized conveying title to Purchaser. Seller, at Seller's sole expense, shall provide Purchaser with a standard owner's title insurance policy in the amount of the Purchase Price from Ticor Title Insurance located at 1555 East McAndrews Road, Suite #100, Medford, Oregon, 97504 ("the Escrow Agent"). Purchaser, at Purchaser's sole expense, shall have the right to instruct the Escrow Agent to issue additional title insurance endorsements desired by Purchaser. Upon complete execution of this Agreement, Seller, at Seller's sole expense, shall order a preliminary title report ("Title Report") from the Escrow Agent with a copy of the Title Report being delivered to Purchaser. Purchaser shall have 15 business days from the date of Purchaser's receipt of the Title Report in order to notify Seller in writing of any exceptions unacceptable to Purchaser ("Objection Notice"). Seller shall notify Purchaser of its intent to remove or not to remove the exceptions stated in the Objection Notice within 10 business days of Seller's receipt of the Objection Notice. Purchaser shall have no obligation to close if the parties are unable to resolve title issues concerning the subject property and the Earnest Money will be refunded to Purchaser. Purchaser's failure to issue Seller the Objection Notice within the time allowed will be deemed as Purchaser's acceptance of the exceptions to title set forth in the Title Report.

**4. Due Diligence Contingency.** Purchaser's purchase of the subject property is contingent upon Purchaser's inspection, review and approval of the physical condition of the subject property, including, but not limited to, title matters, the physical and environmental condition of the subject property, an appraisal, governmental regulations affecting the subject property, and all matters that bind the subject property or will affect its use ("the Due Diligence Contingency"). Purchaser shall provide Seller prior written notice of any intended physical testing to be conducted on the subject property. In the event of physical testing conducted on the subject property, Purchaser, at Purchaser's sole expense, shall cause the subject property to be restored to its original condition unless such requirement is waived in writing by Seller. To assist Purchaser in the due diligence process, Seller shall make arrangements to provide Purchaser with all non-

confidential information relating to the subject property as soon as practical. Purchaser shall give written notice to Seller no later than 5:00 p.m. on the 60<sup>th</sup> day following the date of this Agreement of Purchaser's intent to remove or not to remove the Due Diligence Contingency. In the event no written notice is given to Seller within the time allowed, this Agreement shall be deemed terminated and Seller shall promptly instruct Escrow Agent to refund the Earnest Money to Purchaser.

**5. City Council Contingency.** The purchase of the subject property is contingent upon the Central Point City Council adopting the 2019-2021 biennial budget with a specific allocation of designated funds for the purchase of the subject property in accordance with the terms of this Agreement ("the Budget Contingency"). In the event the Budget Contingency is not met prior to Closing, this Agreement shall be deemed terminated and Seller shall promptly instruct Escrow Agent to refund the Earnest Money to Purchaser.

**6. Conditions of Access.** Seller grants Purchaser access onto the subject property for the limited purpose of allowing Purchaser to conduct inspections and prepare plans for the future development of the subject property. In consideration for Seller providing Purchaser such access to the subject property, Purchaser hereby agrees to indemnify and hold Seller harmless, including the reasonable cost of Seller's legal defense, from any claim for personal injury, property damage or any other action by Purchaser or Purchaser's contractors, agents and representatives relating to any activities on the subject property by Purchaser, Purchaser's contractors, agents or representatives.

**7. As Is.** Except as otherwise stated herein, the parties hereby acknowledge and agree that this is an "AS IS" transaction and, except as otherwise expressly stated herein, Seller makes no representations or warranties as to the condition of subject property, or its fitness for a particular purpose.

**8. Due Performance.** Due performance of the terms, conditions, and agreements of this Agreement to be performed by a party and the accuracy of the representations and warranties of each as of the Closing Date is a condition to closing by the other party. Such performance shall include, without limitation, execution and delivery in proper form of all of the documents required hereunder to be delivered on the Closing Date and the rendering of all other performances and undertakings contemplated hereunder.

**9. Closing.** Closing shall occur on July 2, 2019 ("Closing Date") at the offices of the Escrow Agent.

**10. Casualty and Condemnation.**

**10.1 Casualty or Condemnation.** In the event of threatened or actual condemnation of a material portion of the subject property prior to the Closing Date, at Purchaser's option, Purchaser may elect to proceed with the purchase of the subject property or may terminate this Agreement by written notice to Seller provided within ten (10) days after Purchaser's receipt of written notice of the occurrence of such threatened or actual condemnation. In the event Purchaser elects to terminate this Agreement, the Earnest Money Payment shall be refunded to Purchaser,

and neither party shall have any further rights, liabilities or obligations hereunder.

**10.2 Election to Close.** If Purchaser elects to proceed with the purchase of the subject property despite a condemnation action, then upon Closing, all condemnation proceeds shall be paid towards payment of the Purchase Price. The Purchase Price shall not be reduced, Purchaser shall have no claim against Seller relating to such condemnation other than any claim relating to the delivery of any condemnation proceeds and Purchaser shall acquire the subject property at Closing in its then condition.

**10.3 Risk of Loss.** Except as otherwise provided herein, the risk of loss prior to Closing rests with Seller.

## **11. Closing Provisions.**

**11.1 Closing.** This purchase and sale transaction shall be closed on the Closing Date, unless otherwise extended pursuant to mutual agreement of the parties, at the offices of the Escrow Agent.

### **11.2 Funds and Documents.**

**11.2.1 Purchaser's Funds and Documents.** On or before the Closing Date, Purchaser shall cause to be delivered to the Escrow Agent, for delivery to Seller on the Closing Date, each of the following:

- (a) The sums specified in Section 2 herein, which sums are payable in cash, by certified or cashier's check, wire transfer, or otherwise immediately available federal funds.
- (b) All funds required of Purchaser by reason of the prorations and adjustments described herein and the obligations of Purchaser for costs and expenses as set forth herein.
- (c) All documents required pursuant to this Agreement, properly executed by Purchaser.

**11.2.2 Seller's Documents.** On or before the Closing Date, Seller shall cause to be delivered to the Escrow Agent, for delivery to Purchaser on the Closing Date, each of the following:

- (a) Any funds necessary to satisfy Seller's obligations arising from the prorations and adjustments described herein and for costs and expenses as set forth herein, if any.
- (b) All documents required pursuant to this Agreement, properly executed by Seller.

**11.3 Adjustments and Prorations on Closing.** Seller and Purchaser understand that certain items will need to be prorated among the parties at Closing including, but not limited to real property taxes, if any. Real estate taxes payable for the current year, if any, shall be prorated

on the Closing Date between the Seller and the Purchaser.

#### **11.4 Costs of Closing.**

**11.4.1 Seller's Costs and Expenses.** At Closing, Seller shall pay (i) one-half (1/2) of the Escrow Agent's fee; (ii) the premium for an Owner's standard title insurance policy in the amount of the Purchase Price; (iii) all recording and miscellaneous charges customarily attributable to a Seller in similar transactions; and (iv) attorney fees incurred by Seller with respect to negotiating this Agreement, if any.

**11.4.2 Purchaser's Costs and Expenses.** At Closing, Purchaser shall pay (i) one-half (1/2) of the Escrow Agent's Fee; (ii) any premium for additional title insurance endorsements desired by Purchaser over and above those provided by a standard title insurance policy (iii) all recording and miscellaneous charges customarily attributable to purchasers in similar transactions; and (iv) all attorneys' fees incurred by Purchaser with respect to negotiating this Agreement, if any.

#### **12. Remedies.**

**12.1 Seller's Breach.** If Seller breaches this Agreement or fails to close the sale contemplated hereby through no fault of Purchaser, Purchaser shall be entitled to a refund of the Earnest Money Payment or DAMAGES, SPECIFIC PERFORMANCE OR OTHER INJUNCTIVE OR EQUITABLE RELIEF.

**12.2 Purchaser's Breach.** If Purchaser breaches this Agreement and fails to close the sale contemplated hereby through no fault of Seller, Seller shall be entitled to retention of the Earnest Money Payment.

**13. Brokerage Fees.** No real estate brokerage fee or commission is owing in conjunction with this transaction.

#### **14. Miscellaneous Provisions.**

**14.1 Assignment.** The parties' rights and obligations under this Agreement shall not be assigned to any third party without the other party's prior written consent.

**14.2 Possession.** Purchaser shall be entitled to possession of the subject property on the Closing Date.

**14.3 Attorneys' Fees.** In any proceeding brought to enforce this Agreement or to determine the rights of the parties under this Agreement, the prevailing party shall be entitled to collect, in addition to any judgment awarded by a court, its reasonable attorney fees incurred, and all costs and expenses incurred in connection with such a lawsuit, including attorney fees, expenses of litigation, and costs of appeal. For purposes of this Agreement, the prevailing party shall be that party in whose favor final judgment is rendered or who substantially prevails, if both parties are awarded judgment. The term "proceeding" shall mean and include arbitration, administrative,

bankruptcy, and judicial proceedings including appeals.

**14.4 Notices.** Notices under this Agreement shall be in writing and shall be effective when actually delivered by hand delivery, electronic correspondence or United States mail directed to the other party at the address set forth below, or to such other address as the party may indicate by written notice to the other:

**Seller:**

Investors II, LLC  
c/o Daniel Bunn  
2870 Nansen Drive  
Medford, Oregon 97504-4145  
daniel@rubicon-investments.com

and

Tim Willis  
P.O. Box 2130  
Corvallis, Oregon 97339-2130  
tim@rubicon-investments.com

**Purchaser:**

City of Central Point  
c/o Chris Clayton  
140 South Third Street  
Central Point, Oregon 97502-2216  
chris.clavton@centralpointoregon.gov

and

Daniel O'Connor  
Huycke O'Connor Jarvis, LLP  
823 Alder Creek Drive,  
Medford, Oregon 97504-8900  
dano@medfordlaw.net

**14.5 Amendment.** This Agreement may be amended only by written instrument executed by Seller and Purchaser.

**14.6 Representations and Warranties.** All representations and warranties made herein shall survive Closing.

**14.7 Entire Understanding.** This Agreement, and the documents incorporated herein, consists of the entire Agreement between the parties with relation to the conveyance of the subject property.

**14.8 Time of Essence.** Time is of the essence of this Agreement.

**14.9 Applicable law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.

**14.10 Counterparts.** This Agreement may be executed by the parties in separate counterparts. For the purposes of this Agreement, a facsimile or electronic copy of a signature shall have the same force and effect as an original signature.

**14.11 Statutory Disclaimer.**

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

**14.12 Development Plan.** The parties acknowledge and agree that Purchaser intends to develop the subject property with a public works yard for Purchaser's Public Works Department. Purchaser acknowledges the existence of residential uses in the vicinity of the subject property and, therefore, intends to develop the subject property in such a manner to minimize impacts on such neighboring uses.

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**IN WITNESS WHEREOF**, the parties have executed this Agreement on the dates set forth below.

**SELLER:**

**INVESTORS II, LLC:**

Date: \_\_\_\_\_, 2019

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**PURCHASER:**

**CITY OF CENTRAL POINT:**

Date: \_\_\_\_\_, 2019

By: \_\_\_\_\_  
Its: \_\_\_\_\_

